

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILE
ORIGINAL

In the matter of

Redevelopment of Spectrum to
Encourage Innovation in the
Use of New Telecommunications
Technologies

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ET Docket No. 92-9

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

PETITION FOR CLARIFICATION

Pursuant to Section 1.429 of the Commission's Rules, the American Public Power Association (APPA) hereby submits this Petition for Clarification of the First Report and Order (R&O) in ET Docket No. 92-9, FCC 92-437, released October 16, 1992, regarding the above captioned matter.¹ APPA generally supports the rules adopted in the R&O, subject to some minor modifications detailed below.

I. Introduction

APPA is the national service organization representing more than 1,750 local, publicly owned electric utility systems throughout the country. Approximately 50 APPA members operate fixed microwave systems in the 1.85-1.99, 2.13-2.15, and 2.18-2.20 GHz (2 GHz) bands. These facilities range in size and

¹/ The R&O was published in the Federal Register on Thursday, October 29, 1992, 57 Fed. Reg. 49020. Thus, this petition is timely filed, being within the specified time period under FCC Rule Sections 1.429(d).

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complexity from simple, one-path analog systems to multichannel digital systems spanning more than 900 total miles.

APPA members use these facilities for real-time control, monitoring, and dispatch of electric generation and transmission facilities, as well as long- and medium-haul remote data and voice communications. Typical usage would include: (1) remotely detecting, isolating, and clearing fault conditions on high-power transmission lines within milliseconds, thereby preventing blackouts and loss of lives and property; (2) bringing nuclear, thermal, and hydroelectric generation stations on- and off-line to instantaneously match system capacity with demand; (3) forwarding critical telemetry data between and among a utility's substations, operations control centers, generation stations, and other utilities; and (4) controlling mobile radio base stations and other radio systems used for load control, environmental monitoring, and nuclear plant operations.

Because these APPA members depend upon reliable and secure communications facilities in carrying out their public service obligations, APPA has been an active participant in this proceeding and other activities dealing with the continued use of the 2 GHz band for fixed microwave.

II. The Commission Must Clarify/Amend Rules on Exemption of State and Local Government 2 GHz Licensees

In the Commission's Notice of Proposed Rule Making (NPRM) in this proceeding the FCC recognized that state and local government agencies would face special economic and operational considerations in relocating their 2 GHz fixed microwave operations. Therefore, to address these concerns the

Commission proposed to exempt state and local government 2 GHz fixed microwave facilities from any mandatory transition periods, and to allow these facilities to continue to operate in the 2 GHz band on a co-primary basis indefinitely.²

As previously noted, state and municipally owned electric utilities rely extensively on microwave facilities in the 2 GHz band for day-to-day operations and for critical communications during emergency situations. Accordingly, APPA's Comments in this proceeding supported the FCC's proposed exemption for all incumbent state and local government licensees.

APPA is therefore concerned that the FCC's final rule may have inadvertently restricted the granting of indefinite co-primary status to "public safety licensees," and not to all state and local government licensees, such as public power agencies. For example, paragraph 26 of the R&O indicates that the FCC will exempt systems:

licensed to the public safety and special emergency services radio services -- including state and local governments, police, fire, and medical emergency communications -- from any involuntary relocation. Moreover, Appendix A, new Rule Section 94.59(b), only lists "public safety licensees" as being exempt from the Commission's mandatory relocation provisions.

A. Extent of Impact on Publicly Owned Electric Utilities

Approximately 40 of the 50 APPA members with 2 GHz fixed microwave licenses operate as political subdivisions of state or local government.³

²/ NPRM, para. 25.

³/ For a list of these systems, see Appendix A.

Under the FCC's Rules the eligibility for state and local agencies to operate private microwave systems is based on their eligibility to hold a license under Part 90 in the Private Land Mobile Radio Service.⁴ Under Part 90 a state or municipal utility is eligible to hold a license in either the Public Safety Radio Service under the local Government Radio Service as a state or local government⁵, or to hold a license in the Industrial Radio Service under the Power Radio Service as a utility service provider.⁶ Consequently, while some of APPA's members hold FCC licenses for Local Government (PL) Radio Service (e.g. Orlando Utilities Commission), most hold licenses under the Power Radio Service (IW).

B. Restricting Exemption Would Be Inconsistent

To restrict the exemption to "public safety" entities at this late stage would be inconsistent with the Commission's proposal. Throughout this proceeding the FCC has indicated that the proposed exemption was inclusive of all state and local government agencies licensed in the 2 GHz band, irrespective of specific agency functions.

For example, in its NPRM the Commission made at least three references to exempting "state and local licensees" from mandatory transition periods and granting these governmental licensees permanent co-primary status in the 2 GHz band.⁷ Taken in context, each reference indicated that the Commission proposed

⁴/ 47 C.F.R. Sec. 94.5

⁵/ 47 C.F.R. Sec. 90.17

⁶/ 47 C.F.R. Sec. 90.63

⁷/ NPRM, paras. 24, 25, and 27.

to exempt all state and local governments -- not just those holding 2 GHz licenses for PL Radio Service under the Public Safety category.

Commission actions subsequent to the adoption of the NPRM reinforced this conclusion. For example, in a May 13, 1992 letter to U.S. Senator Alan C. Cranston, FCC Chief Engineer Thomas P. Stanley made it clear that the intent of the NPRM was to exempt all state and local government agencies, regardless of whether they were police departments, fire departments, or publicly owned utilities. "The Commission proposed to permit state and local government licensees such as Metropolitan Water District of Southern California to continue their operations indefinitely on a primary basis," he wrote.

Likewise, the September 17, 1992, News Release that the Commission issued upon adoption of the R&O, stated that "2 GHz fixed microwave operations licensed to state and local governments, including public safety, would be exempt from any involuntary relocation."⁸

APPA therefore urges the Commission to clarify that, consistent with its original proposal, the exemption shall include all state and local government incumbents.

⁸/ While news releases are generally not to be relied upon as official Commission action, the Conference Report accompanying H.R. 5678 specifically cited the FCC's news release as the basis for its decision to delete the "Hollings" amendment from the final language of the FCC's appropriations bill. The Report stated that "[the] conferees expect that the text of the Commission's decision will reflect the decision announced by the Commission in its press release of September 17, 1992," 138 Cong. Rec. H9569 (1992).

C. Restriction of Exemption Would be Arbitrary and Unworkable

If, however, the FCC has intentionally limited the exemption to "public safety," APPA strongly objects to the Commission's decision as being arbitrary, unwarranted and unworkable. A decision to exempt "public safety," as opposed to all other state and local government agencies, cannot be reconciled with the rest of the FCC's decision. If the decision is based on the need to protect public safety agencies from incurring any expenses, this implies that the Commission is not confident that the rules it has adopted will truly protect all microwave users. Likewise, the FCC has not explained why "public safety" agencies are more in need of financial protection than other public agencies. It is significant to note on this point that Congress has exempted all state and local government agencies from paying FCC application fees.⁹

Further, if the exemption is based on the fact that public safety agencies should not be forced into commercial "arbitration," the FCC has not explained why public safety agencies are different from other state agencies.

As a practical matter, the decision also ignores the fact that many municipal utilities operate the microwave systems on which public safety entities rely. For example, in many cases it is the municipality's utility department that holds the license and operates the microwave network that is relied upon by all of the agencies -- including public safety agencies -- that comprise the municipality. Thus, to exempt public safety entities alone would not necessarily protect the integrity of the 2 GHz microwave system on which public safety services depend.

⁹/ U.S.C. 47 section 158(d)(1)(A) and (B).

While incumbent state and local government utilities operating in the 2 GHz band could arguably qualify for the Commission's exemption by amending their station licenses to change the basis of their private microwave radio eligibility from Power Radio (IW) to Local Government (PL), this would appear to impose an inefficient and unnecessary burden on licensees and the Commission's licensing staff. Instead, the Commission should amend its transition Rules to explicitly state that it is exempting all incumbent state and local government licensees, including public safety entities, from any mandatory relocation.¹⁰

III. Conclusion

APPA generally supports the Commission's "transition framework" as providing a mechanism to reallocate the 2 GHz band to emerging technologies while ensuring that existing users of the band emerge from the proceeding "whole" both operationally and financially.

However, in order to ensure that this transition framework adequately protects all public safety uses of existing 2 GHz fixed microwave systems, the Commission is asked to clarify that its exemption for state and local governments applies to all state and local government agencies, including public power agencies.

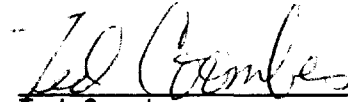
¹⁰/ Appendix B contains suggested Rule language.

WHEREFORE, THE PREMISES CONSIDERED, the American Public Power Association respectfully requests the Commission to take actions consistent with the views expressed herein.

Respectfully submitted,

AMERICAN PUBLIC POWER ASSOCIATION

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APPENDIX A
Publicly Owned Electric Utilities with
Fixed Microwave Systems in the 2 GHz Band*

<u>STATE</u>	<u>CITY</u>	<u>SYSTEM</u>
Alabama	Foley	Riviera Utilities
Arizona	Fort Defiance	Navajo Tribal Utility Authority
Arizona	Phoenix	Salt River Project
California	Los Angeles	Los Angeles Dept. of Water and Power
California	Oakland	East Bay Municipal Utility District
California	Pinecrest	Tri-Dam Power Authority
California	Sacramento	Sacramento Municipal Utility District
California	Turlock	Turlock Irrigation District
Florida	Gainesville	Gainesville Regional Utilities
Florida	Jacksonville	Jacksonville Electric Authority
Florida	Orlando	Orlando Utilities Commission
Florida	Tallahassee	City of Tallahassee
Georgia	Thomasville	City of Thomasville
Missouri	Chillicothe	Chillicothe Municipal Utilities
Missouri	Farmington	Farmington City Light and Power
Nebraska	Columbus	Nebraska Public Power District
Nebraska	Holdrege	Central Nebraska Public Power and Irrigation District
Nebraska	Lincoln	Lincoln Electric System
Nebraska	Omaha	Omaha Public Power District
New Mexico	Farmington	Farmington Electric Utility System
New Mexico	Los Alamos	Los Alamos County Utilities
New York	New York	New York Power Authority

(continued)

<u>STATE</u>	<u>CITY</u>	<u>SYSTEM</u>
Oklahoma	Vinita	Grand River Dam Authority
Oregon	Newport	Central Lincoln People's Utility District
Puerto Rico	San Juan	Puerto Rico Electric Power Authority
South Carolina	Moncks Corner	South Carolina Public Service Authority
Tennessee	Chattanooga	Chattanooga Electric Power Board
Tennessee	Memphis	Memphis Light, Gas and Water Division
Texas	Austin	Lower Colorado River Authority
Texas	Austin	Austin Electric Utility Department
Texas	Bryan	Texas Municipal Power Agency
Texas	San Antonio	City Public Service
Texas	Seguin	Guadalupe-Blanco River Authority
Washington	Ephrata	Grant County P.U.D. No. 2
Washington	Everett	P.U.D. No. 1 of Snohomish County
Washington	Richland	Washington Public Power Supply System
Washington	Seattle	Seattle City Light
Washington	Tacoma	Tacoma Dept. of Public Utilities
Washington	Wenatchee	Chelan County P.U.D. No. 1

* Based on a survey of APPA Membership in December 1991.

APPENDIX B
Proposed Rule Clarification

Section 94.59 Transition of the 1.85-1.99, 2.13-2.15, and 2.18-2.20 GHz bands from Private Operational-Fixed Microwave Service to emerging technologies.

* * *

(b) Private Operational-Fixed Microwave Service licensees will maintain primary status in these bands until [Date: end of transition period to be determined in the Second Report and Order]. After [Date] Private Operational-Fixed Microwave Service licensees will maintain primary status in these bands unless and until an emerging technology service licensee requests mandatory relocation of the fixed microwave licensee's operations in these bands; however, licensees eligible to be licensed in the Local Government, Police, Fire, Highway Maintenance, Forestry-Conservation, Public Safety, and Special Emergency radio services will be exempt from any mandatory relocation. The Commission will amend the operating license of the fixed microwave licensee to secondary status if the following requirements are met:

* * *